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205-470—66

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 781

TENNESSEE BURLEY TOBACCO GROWERS' ASSOCIATION,
PETITIONER

v.

COMMODITY CREDIT CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1) is reported at 350 F. 2d 34. The opinion of the district court (Pet. App. 22) is not reported.

JURISDICTION

The judgments of the court of appeals on the appeal and cross appeal were entered on September 2, 1965 (Pet App. 44–45). The petition for a writ of certiorari was filed on November 29, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in light of express provisions of the contracts between Commodity Credit Corporation and petitioner under the tobacco price support loan program, the court below correctly held that Commodity was liable only for those overhead expenses that had been incurred by petitioner with Commodity's prior approval.

STATUTES INVOLVED

Section 401(a) of the Agricultural Act of 1949, as amended, 7 U.S.C. 1421(a), provides:

> The Secretary shall provide the price support authorized or required herein through the Commodity Credit Corporation and other means available to him.

Section 405 of the Act, 7 U.S.C. 1425, provides:

> No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan made under authority of this Act unless such loan was obtained through fraudulent representations by the producer. This provision shall not, however, be construed to prevent the Commodity Credit Corporation or the Secretary from requiring producers to assume liability for deficiencies in the grade, quality, or quantity of commodities stored on the farm or delivered by them, for failure properly to care for and preserve commodities, or for failure or refusal to deliver commodities in accordance with the requirements of the program. There is authorized to be included in the terms and conditions of any such nonrecourse loan a provision

whereby on and after the maturity of the loan or any extension thereof Commodity Credit Corporation shall have the right to acquire title to the unredeemed collateral without obligation to pay for any market value which such collateral may have in excess of the loan indebtedness.

STATEMENT

Commodity Credit Corporation, a corporate instrumentality of the United States Government, is authorized by the Commodity Credit Corporation Charter Act, 15 U.S.C. 714, *et seq.*, and the Agricultural Act of 1949, as amended, 7 U.S.C. 1421, *et seq.*, to support the prices of certain agricultural commodities through loans. For the crop years 1946 through 1955 (except 1953) Commodity entered into a series of loan agreements with petitioner, the Tennessee Burley Tobacco Growers Association (an association of over 70,000 Tennessee tobacco growers or producers (App. 136a)),[1] for the purpose of supporting tobacco prices (App. 34a–49a, 119a, 273a). Under the support program, the grower-members of the Association brought their tobacco to an auction warehouse (App. 122a) where commercial tobacco buyers bid on it. If the bid price on a member's crop was less than the percentage of parity price established by the Secretary of Agriculture, the Association purchased the tobacco at this support price (App. 123a), using the

[1] "App.", with page designations ending in "a", refers to the printed appendix filed in the court of appeals by Commodity.

money loaned it by Commodity (App. 125a). The Association would then re-dry and store the tobacco in warehouses until it was later resold (App. 123a–125a). It was hoped that the stored tobacco could be eventually resold at prices sufficient to cover the support price at which the Association had bought the tobacco, plus all expenses (App. 145a–146a, 284a–285a), in which event the entire loan would be repaid to the government. If, however, there was a deficiency between the amounts of the loans and the amounts eventually realized in reselling the tobacco (as happened for the crop years 1951, 1952, 1954, and 1955), Commodity was required, under 7 U.S.C. 1425 (*supra*, pp. 2–3), to absorb it.

The particular controversy in this case relates to the overhead expenses (*i.e.*, in handling, storing, and reselling the tobacco) incurred by the Association for the 1951, 1952, 1954 and 1955 crop years. The loan contracts entered into between Commodity and the Association for each of these crop years provided[2] that the growers would pay the Association 12 cents per hundredweight to be applied to overhead expenses (App. 35a), and that Commodity would lend the Association an amount to cover overhead expenses of the Association in connection with loan tobacco, subject to the following conditions:

> (1) Request for payment shall be made only * * * to pay for such overhead expenses; *shall be made only for overhead expenses approved by Commodity as reasonable and necessary;*

[2] The terms of the contracts were substantially identical (Pet. App. 17; App. 34a–49a, 119a–120a).

> and shall be made only to the extent that the overhead expenses exceed 12 cents per hundred pounds, green weight, of loan tobacco. [App. 36a; emphasis supplied.]

The Association also agreed in the contracts (App. 43a):

> If the Association expects to request funds from Commodity during the period of this Agreement for use in payment of overhead costs, the Association shall submit to Commodity budgets of expenditures, the first of such budgets to be submitted prior to the incurring of any obligations by the Association. The form of such budgets shall be acceptable to Commodity and shall contain such details as may be requested by Commodity both as to use of such funds and use of any other funds available to the Association for payment of overhead costs.[3]

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[3] The contracts also provided that any funds collected from the growers—either directly or through warehousemen—above the 12 cents per hundredweight should also be used, *inter alia*, "to pay overhead costs of handling loan tobacco which would otherwise be advanced by Commodity" (App. 36a). In addition, if the Association desired to spend greater sums for expenses than those amounts received from the growers and warehousemen plus the amounts approved and loaned by Commodity for expenses, the Association had other funds which could be utilized for this purpose (from $3.00 lifetime membership dues; from profits it made in operating tobacco storage warehouses; and from undistributed net gains, over the amounts of loans, from the sale of tobacco crops for prior years (App. 16a, 136a–140a, 275a)); and Commodity had no authority under the loan contracts to prevent the Association from incurring such additional expenses (App. 135a, 139a, 230a–231a).

Pursuant to these provisions, the Association submitted to Commodity budgets of proposed overhead expenses for each of the four crop years in question for Commodity's approval (App. 70a, 72a, 75a, 82a, 95a). In some instances, Commodity refused to approve these proposed overhead expense budgets as initially submitted on the ground that the proposed expenses were excessive, and approved them only when the amounts requested by the Association had been substantially reduced (App. 71a–75a, 77a, 93a–94a, 96a). The Association also submitted, pursuant to the contracts and proposed budgets, requests for payment of specific overhead expenses; these, too, were sometimes disapproved by Commodity because of excessiveness (App. 87a–90a, 92a, 98a–99a).[4] In spite of Commodity's disapproval of some of the proposed overhead expenses, and its refusal to advance the Association all that the Association desired for overhead, the Association nevertheless (as it was entitled to do, see n. 3, *supra*) decided to incur $173,121.16 of overhead expenses for the crop years 1951, 1952, 1954 and 1955, in excess of the 12 cents per hundredweight collected from the growers, the fees collected from the warehousemen, and the amounts loaned by Commodity (App. 283a, 289a).

Because of disagreements between Commodity and the Association, no loan contracts were entered into

[4] Prior to December, 1954, specific requests for payment of overhead expenses, pursuant to a previously approved budget, were submitted by the Association to Commodity's fiscal agent, the Louisville Bank for Co-operatives. However, beginning in December 1954, such requests for payment of overhead were submitted directly to Commodity (App. 85a–86a, 133a–134a).

after the 1955 crop year (App. 111a–116a, 281a),[5] and the existing loans were recalled in May 1958 (App. 105a, 281a). The Association was unable to pay, and Commodity replevied the remainder of the tobacco (App. 16a, 281a) and sold it (App. 117a, 282a), resulting in a deficiency of $1,207,273.59, which Commodity paid.

The Association brought this action (App. 1a) in a federal district court seeking reimbursement from Commodity of $221,825.48 in overhead expenses. This sum consisted of (1) the amount of $48,704.32, representing the sum total of the three cents per hundredweight which had been paid by warehousemen and used for overhead (see n. 3, *supra*), and (2) the amount of $173,121.16 representing the overhead expenses incurred by the Association in addition to the fees per hundredweight collected and the amounts advanced by Commodity (App. 289a). After trial, the district court held that Commodity was liable to the Association for the $173,121.16 of unadvanced overhead expenses, but not for the $48,704.32 representing expenses paid for out of the three cents per hundredweight collected from the warehousemen (App. 289a). The Court of Appeals for the Sixth Circuit, on Commodity's appeal, reversed the judgment entered by the district court against Commodity on the $173,121.16 item and, on the Association's cross-appeal, affirmed the

[5] The disagreements related to Commodity's disapproval of the Association's operating its own storage warehouses and redrying plants for the loan tobacco, and the fact that the Association incurred much higher overhead expenses than other associations handling a comparable amount of tobacco (App. 112a, 215a–222a, 279a–280a).

district court's judgment refusing to grant the Association the other item of $48,704.32 (Pet. App. 21–22).

ARGUMENT

The decision of the court of appeals turns on a narrow question of contract interpretation, is limited to the particular type of contracts here involved, and is controlled by the explicit provisions of those contracts (Pet. App. 17). Moreover, it is, we submit, plainly correct and there is no conflict between circuits. Accordingly, further review is not warranted.

1. The primary purpose of the loans by Commodity to the Association was to enable the Association to bid in its growers' tobacco at the support price. Commodity agreed also to lend the Association such overhead expenses as Commodity might approve in advance, but the contract provided expressly (see p. 4, *supra*) that Commodity assumed no liability for any overhead expenses incurred by the Association without its prior approval. Since there was no such prior approval for the expenses here in issue, the court below correctly held that the Association was not entitled to reimbursement (Pet. App. 20).[6] Any other reading of the contract, as the court below observed (Pet. App. 20–21), must be rejected because it

> would deprive the Government of control over the amounts to be advanced or reimbursed to cover overhead expenses in connection with the

[6] By like reasoning, as the court also pointed out, Commodity was not liable under the contract for the $48,704.32 claim of the Association, representing fees collected by the Association without Commodity's authorization from warehousemen (Pet. App. 21).

price support loan program. We find no provision that reasonably could be construed as conferring upon the Association carte blanche authority to obligate the Government for any and all overhead expenses it might see fit to incur. Such fiscal irresponsibility on the part of Commodity is not lightly to be inferred.

2. The Association's contention (Pet. 9) that 7 U.S.C. 1425 would be made "inoperative" by the decision of the court of appeals is without merit. The statute provides only that no *producer* shall be liable for any deficiency arising from the sale of the tobacco, and this does not entitle the *Association* to recover from Commodity amounts which the Association expended for unapproved overhead expenses. Commodity fully complied with the provisions of 7 U.S.C. 1425, since the producers—the growers—received the statutory 90 percent of parity price for their tobacco and the government absorbed the full loan deficiency arising from the resale of the tobacco. The entire difference between the amounts of the loan used to pay the growers and defray expenses, and the amounts ultimately received for the tobacco, was absorbed by the government; that is all the statute requires. Certainly, Congress did not contemplate that in addition to the government's absorbing the full loan deficiency, and after the growers had received the full support price for their tobacco, an association of growers could require the government to reimburse it for additional expenses which had not been covered by the loan for the very reason that the government disapproved of them.

3. Petitioner also argues that "the law of agency implies a promise by Commodity to reimburse the Association for the overhead expenses involved herein" (Pet. 14–15). The argument is without merit; no such promise may be implied. First, the relationship between Commodity and the Association was not that of principal and agent; it was a creditor-debtor relationship such as exists under numerous government loan programs. Second, even if the relationship was that of principal-agent, there could be no implied promise to pay under the facts of the present case, where the "agent's" overhead expenses were not only unauthorized, but actually disapproved, by its "principal". Finally, the settled rule that the United States is not subject to implied-in-law contractural obligations precludes the imposition upon Commodity of any liability based on the "implied promise" theory. *United States* v. *Minn. Investment Co.*, 271 U.S. 212, 217.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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